

**Florida's Request To Assume Administration of a Clean Water Act Section 404 Program
(85 FR 57853, September 16, 2020) EPA-HQ-OW-2018-0640**

Code 1d EPA-FDEP MOA

Incompleteness of the MOA between EPA and FDEP

Commenter (0386) expressed concerns about FDEP's reliance on memoranda of agreement that had not been completed or made available to the public for comment. FDEP's proposal remains fundamentally flawed in several respects, including: (1) FDEP's decision to remove references to memoranda of agreement (MOA) with federal agencies from the proposed rules, and not to disclose the content of those MOAs so as to allow for public comment before the state submits an application to the EPA, despite having told the public that it would.

Commenter (0431) stated that EPA cannot waive review of certain categories of applications, including applications whose discharges have a reasonable potential for adverse impacts on waters of another state or Tribe. The commenter noted that language was added to the state's two MOAs—one with EPA and the other with the USACE. This commenter stressed that this language is to ensure that EPA is involved in any disputes over what constitutes Indian Country under the Section 404 Program. Additionally, the commenter pointed out that FDEP in the Section 404 Applicant's Handbook at Section 5.2.5 has committed to include EPA in the review of any project where FDEP fails to accept the recommendations of an affected state or Tribe received during the public comment period. The commenter stated that the Operating Agreement between FDEP and the State Historic Preservation Office also affirmed EPA's role in review of and participation in resolution of cultural resource-related disputes.
